

APR 05 2006**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

YOCIO LEYVA, a/k/a Salvador Cortez,
Rocio Leyva and Yoshio Leyva.

Defendant - Appellant.

No. 05-50145

D.C. No. CR-04-01358-GPS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
George P. Schiavelli, District Judge, Presiding

Argued and Submitted February 10, 2006
Pasadena, California

Before: BEEZER, T.G. NELSON, and GOULD, Circuit Judges.

Yocio Leyva appeals his sentence and several aspects of his supervised release. We have jurisdiction pursuant to 28 U.S.C. § 1291. Because a disputed

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

issue in the pre-sentence report was never resolved, we vacate the sentence and remand.

Pursuant to Federal Rule of Criminal Procedure 32(i)(3)(B), the district court must rule on Leyva's objection to the paragraph in the presentence report setting forth the background circumstances leading to the conviction.¹ Explicit findings are necessary, among other reasons, "to assist administrative agencies that are required to make decisions based on presentence reports."² Accordingly, the Government's argument for harmlessness fails. Because we must vacate the sentence and remand on this issue, we do not reach the other issues on appeal.

SENTENCE VACATED and REMANDED.

¹ Fed. R. Crim. P. 32; *See, e.g., United States v. Thomas*, 355 F.3d 1191, 1200 (9th Cir. 2004); *United States v. Leyva-Franco*, 311 F.3d 1194, 1196–97 (9th Cir. 2002); *United States v. Fernandez-Angulo*, 897 F.2d 1514, 1516 (9th Cir. 1990) (en banc).

² *Leyva-Franco*, 311 F.3d at 1197.